

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

FILED
JAMES BOHINI
CLERK

2004 JAN 26 PM 1:42

DAVID BILLUPS,
PLAINTIFF,

-vs-

JAMES McWEENEY, ET AL.,
DEFENDANTS. /

CASE NO. C-1-01-377
JUDGE SPIEGEL
MAGISTRATE JUDGE HOGAN

U.S. DISTRICT COURT
SOUTHERN DIST OHIO
WEST DIV CINCINNATI

MOTION TO FILE ENCLOSED LEGAL
PAPERS NUNC PRO TUNC AND FOR AN
EVIDENTIARY HEARING

On January 21, 2004, Plaintiff received the enclosed envelope stamped, "Returned to sender, attempted not known". This envelope contained several Motions for filing with this Court for this case. The envelope is also stamped, "X-Ray Friday U.S. Marshals Service"(sic). This would suggest that although Plaintiff's envelope was stamped, Return to sender, attempted not known"(sic), Plaintiff's Motions did, in fact, make it to the Clerk of Court's office, and at that time was returned to sender for some reason.

As verified by the attached copies, Plaintiff did mail these Motions timely on January 6, 2004. Therefore, pursuant to HOUSTON vs. LACK, 108 S.Ct. 2379 (1988), Plaintiff is requesting the enclosed Motions be deemed filed on January 6, 2004.

Plaintiff has returned the envelope and Motions untouched, as Plaintiff received it. Plaintiff further requests an Evidentiary Hearing to answer why his Motions were received by the Clerk's Office then returned to sender, attempted not known, and also why his Motions were not filed.

Plaintiff further requests an audit, to discover if any other of his Motions have not been filed by the Clerk's Office.

Respectfully Submitted,

/s/ David Billups
David Billups
P.O. Box 7010-211903
Chillicothe, Ohio
45601

CERTIFICATE OF SERVICE

I hereby certify a copy of the foregoing has been served to Counsel for Defendants at: Marianne Pressman#0059512, 441 Vine Street, 1600 Carew Tower, Cincinnati, Ohio 45202 this 21st day of January 2004 by regular U.S. Mail.

/s/ David Billups
David Billups